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UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF MONTANA

INCREDIBLE AUTO SALES, LLC) Bankruptcy No.06-60855-RBK
)
)
Debtor,)
)

**EMERGENCY MOTION TO PROHIBIT OR CONDITION USE,
SALE OR LEASE OF INVENTORY AND/OR CASH COLLATERAL
AND NOTICE THEREOF**

Hyundai Motor Finance Company (“HMFC”), through its undersigned counsel, moves the Court as follows:

BACKGROUND

1. Incredible Auto Sales, LLC (“Debtor”) commenced this case under Chapter 11 of Title 11 of the United States Code on October 17, 2006. Debtor remains in possession of its property and continues to operate its business as a dealer of new Kia automobiles and of used cars and provides parts and service for such vehicles at its places of business in Billings, Montana.

2. On or about July 27, 2005, Debtor and HMFC entered into that certain Inventory Loan and Security Agreement and Interest Rate and Charges Addendum. The Inventory Loan

and Security Agreement includes the grant of a security interest by the Debtor to HMFC and, *inter alia*, “[a]ll inventory of new and used motor vehicles”. HMFC’s security interest was duly perfected by the filing of financing statements in the office of the Secretary of State of Montana on July 26, 2005, August 25, 2005, and October 6, 2006, under filing Nos. 83548795, 83946575 and 89380937, respectively.

3. Section 6 of the Inventory Loan and Security Agreement further provides that “[HMFC] shall have the right at any time to inspect the Collateral and Debtor’s books and records related thereto.” On October 23, 2006, after prior notice and consent, HMFC conducted an inspection of Debtor’s places of business and reviewed its files. HMFC has been denied further access to Debtor’s business premises contrary to the terms of the Inventory Loan and Security Agreement.

4. As of October 23, 2006, HMFC had advanced \$2,243,608.81 to the Debtor that remains outstanding and unpaid. The inspection held that day identified actual inventory of new and used vehicles valued by HMFC at \$1,800,661.81. Debtor has failed or so far refused to remit \$442,947.00 of proceeds of the sales of vehicles to HMFC contrary to the terms of the Inventory Loan and Security Agreement.

5. HMFC’s inspection also found that new and used vehicles valued at \$76,067.00 have been sold by the Debtor since the date of bankruptcy and, on information and belief, that the proceeds thereof are being held in a segregated account to which HMFC has no access. The proceeds obtained since the commencement of this case have not been remitted to HMFC.

6. HMFC is informed and believes certain of the vehicles securing Debtor’s obligation under the Inventory Loan and Security Agreement (i) have been “double floored” with another lender, (ii) liens on vehicles taken as “trade ins” have not been paid in full by Debtor and

(iii), as alleged above, Debtor was “out-of-trust” in the approximate amount of \$367,000 as of the date of bankruptcy and such amount has increased during the brief pendency of this case. In addition, at least two auto auctions have alleged that vehicles subject to HMFC’s security interest were purchased with checks for which Debtor had insufficient funds and, therefore, claim an interest in the vehicles so purchased. HMFC has been required to answer and deny such allegations to protect its security interests in such vehicles.

7. HMFC believes it will be irreparably harmed and injured if sale of collateral is not prohibited or conditioned as provided in this Motion.

MOTION

8. HMFC moves the Court, pursuant to 11 U.S.C. § 363(e), Rule 4001(b)(1), F.R. Bank. P. and Local Rule 4002-1, to prohibit the further sale or lease of HMFC’s collateral and/or to condition such sales or leases and the use of cash collateral as follows:

A. HMFC shall be allowed to inspect its collateral at the Dealer’s places of business as well as the books and records relating thereto at all reasonable times during business hours without prior notice as provided in the Inventory Loan and Security Agreement;

B. All proceeds of the sale of HMFC’s collateral shall be deposited in segregated debtor in possession accounts, and HMFC shall be provided daily electronic access to statements for such accounts;

C. Debtor shall (i) remit to HMFC the amount advanced for each vehicle sold during the pendency of this case and/or (ii) provide HMFC with a senior, replacement lien on each vehicle or other property acquired by Debtor with any proceeds of sale of HMFC’s collateral;

D. Debtor shall deliver the titles of vehicles securing its obligations to HMFC, including replacement collateral, for safekeeping during the pendency of this case; provided, such titles shall be redelivered to Debtor upon sale of vehicles and disposition of the proceeds in accordance with the Court's Order.

E. Debtor shall be required to use cash collateral only as provided in a budget submitted to and approved by this Court after notice and a hearing; and

F. All employees of Debtor shall be instructed to cooperate fully with HMFC.

9. HMFC respectfully requests that the foregoing Motion be granted preliminarily, without a hearing, and that an expedited hearing be scheduled to make such relief permanent during the pendency of this case.

DATED this 26th day of October, 2006.

/s/ Charles W. Hingle
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NOTICE TO DEBTOR AND INTERESTED PARTIES

If you object to the motion, you must file a written responsive pleading and request a hearing within ten (10) days of the date of the motion. The objecting party shall schedule the hearing and shall include in the caption of the responsive pleading the date, time and location of the hearing by inserting in the caption the following:

NOTICE OF HEARING

Date: _____

Time: _____

Location: _____

This contested matter shall be scheduled for hearing for the next hearing date scheduled in the division within which the case is filed. The date, time, and location of the hearing can be obtained from the Clerk of Court or from the Court's website at www.mtb.uscourts.gov. In the event such scheduled hearing date is thirty (30) days beyond the filing date of the motion for relief, then a preliminary hearing within such thirty (30) day period shall be scheduled by the responding party after such party contacts the Clerk of Court to confirm the preliminary telephone hearing date and time, which shall be set forth in the response.

If you fail to file a written response to the above Motion to Modify Stay with the particularity required by Mont. LBR 4001-1(b), and request a hearing, within ten (10) days of the date of this Notice, with service on the undersigned and all parties entitled to service under all applicable rules, then your failure to respond or to request a hearing will be deemed an admission that the motion for relief should be granted without further notice or hearing.

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of October, 2006, I served a true and correct copy of the foregoing, addressed as follows and by the method shown below:

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